

Senate File 594 - Introduced

SENATE FILE _____
BY COMMITTEE ON GOVERNMENT
OVERSIGHT

(SUCCESSOR TO SSB 1262)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to employment, including whistleblower complaints
2 received by the citizens' aide and disclosures of information
3 by health care workers, and providing penalties.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
5 TLSB 2770SV 82
6 ec/je/5

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1 1 Section 1. Section 2C.11A, Code 2007, is amended to read
1 2 as follows:
1 3 2C.11A SUBJECTS FOR INVESTIGATIONS == DISCLOSURES OF
1 4 INFORMATION.
1 5 The office of citizens' aide ~~shall investigate~~ may receive
1 6 a complaint filed by an employee who is not a merit system
1 7 employee or an employee covered by a collective bargaining
1 8 agreement and who alleges that adverse employment action has
1 9 been taken against the employee in violation of section
1 10 70A.28, subsection 2. A complaint filed pursuant to this
1 11 section shall be made within thirty calendar days following
1 12 the effective date of the adverse employment action. The
1 13 citizens' aide shall review the complaint and make a
1 14 determination of whether to investigate the matter pursuant to
1 15 the requirements of section 2C.12. The citizens' aide shall,
1 16 in an expeditious manner, either issue a report indicating
1 17 that the citizens' aide declined to investigate the complaint
1 18 and the reason for that decision or investigate the matter and
1 19 shall issue a report with findings relative to the complaint
1 20 in an expeditious manner. The report shall be issued to the
1 21 employee and to the director or head of the employee's agency,
1 22 or to the governor if the agency director or head is the
1 23 subject of the investigation, and to the legislative oversight
1 24 committee.
1 25 Sec. 2. Section 70A.28, subsection 6, Code 2007, is
1 26 amended to read as follows:
1 27 6. Subsection 2 may also be enforced by an employee
1 28 through an administrative action pursuant to the requirements
1 29 of this subsection if the employee is not a merit system
1 30 employee or an employee covered by a collective bargaining
1 31 agreement. An employee eligible to pursue an administrative
1 32 action pursuant to this subsection who is discharged,
1 33 suspended, demoted, or otherwise reduced in pay and who
1 34 believes the adverse employment action was taken as a result
1 35 of the employee's disclosure of information that was
2 1 authorized pursuant to subsection 2, may file an appeal of the
2 2 adverse employment action with the public employment relations
2 3 board within thirty calendar days following the later of the
2 4 effective date of the action or the date a finding report is
2 5 issued to the employee by the office of the citizens' aide
2 6 pursuant to section 2C.11A. The findings report issued by the
2 7 citizens' aide may be introduced as evidence before the public
2 8 employment relations board but the citizens' aide or any
2 9 member of the citizens' aide staff shall not be compelled to
2 10 testify before the board with respect to the report. The
2 11 employee has the right to a hearing closed to the public, but
2 12 may request a public hearing. The hearing shall otherwise be
2 13 conducted in accordance with the rules of the public
2 14 employment relations board and the Iowa administrative
2 15 procedure Act, chapter 17A. If the public employment
2 16 relations board finds that the action taken by the person

2 17 appointing the employee was in violation of subsection 2, the
2 18 employee may be reinstated without loss of pay or benefits for
2 19 the elapsed period, or the public employment relations board
2 20 may provide other appropriate remedies. Decisions by the
2 21 public employment relations board constitute final agency
2 22 action.

2 23 Sec. 3. NEW SECTION. 147.105 PATIENT PROTECTION ==
2 24 HEALTH CARE WORKERS == REPORT OF ADVERSE EVENTS.

2 25 1. DEFINITIONS. As used in this section, unless the
2 26 context otherwise requires:

2 27 a. "Direct care worker" means a trained and supervised
2 28 individual who provides services, care, and emotional support
2 29 to patients and health care recipients.

2 30 b. "Established guidelines for certified individuals and
2 31 direct care workers" includes written protocols and procedures
2 32 as defined by the department for direct care workers,
2 33 emergency medical care providers as defined in chapter 147A,
2 34 and substance abuse counselors as certified by the Iowa board
2 35 of certification.

3 1 c. "Health care worker" means any individual employed by
3 2 or under contract with a hospital, health care provider, or
3 3 health care agency to provide health care services.

3 4 d. "Professional standards of care" means authoritative
3 5 statements that describe a level of care or performance common
3 6 to the profession by which the quality of professional
3 7 practice can be judged and which reflect the values and
3 8 priorities of the profession.

3 9 2. A health care worker, who reasonably believes a
3 10 particular practice the health care worker has observed
3 11 occurring at the health care worker's place of employment,
3 12 based on the health care worker's professional standards of
3 13 care, professional code of ethics, or established guidelines
3 14 for certified individuals and direct care workers, is a
3 15 material violation of health and safety laws or a breach of
3 16 public safety that may lead to harm to patients, consumers, or
3 17 citizens, may report the information relating to the violation
3 18 or breach within fourteen days of its occurrence to the health
3 19 care worker's supervisor, employer, or member of management or
3 20 administration, in order that investigation can be undertaken
3 21 and corrective action be initiated. The health care worker
3 22 shall be protected against reprisals or retaliatory or
3 23 punitive action by the individual or institution receiving
3 24 such a report.

3 25 3. If after fourteen days following report of a material
3 26 violation or breach pursuant to subsection 2, the health care
3 27 worker continues to see the particular practice occurring in
3 28 the workplace giving rise to the report, the health care
3 29 worker may disclose information to the appropriate licensing
3 30 board, the department, the department of inspections and
3 31 appeals, the department of human services, the Iowa healthcare
3 32 collaborative, the division of insurance in the department of
3 33 commerce, a member or employee of the general assembly, the
3 34 attorney general, a state-mandated health information
3 35 collection agency, any other public official or law
4 1 enforcement agency, federal government agency or program, the
4 2 governing board of the health care worker's employer or
4 3 institution, or the health care worker's professional
4 4 association, and shall be protected against reprisals or
4 5 retaliatory or punitive actions by the individual or employing
4 6 health care entity if disclosure of the information is not
4 7 otherwise prohibited by statute and if the information meets
4 8 any of the following requirements:

4 9 a. Constitutes state-mandated health data required to be
4 10 submitted to state agencies.

4 11 b. Informs state agencies or entities of violations of
4 12 state health, safety, occupational health, licensure, or
4 13 insurance laws.

4 14 c. Is reasonably believed by the health care worker to be
4 15 a material violation of health and safety laws or a breach of
4 16 public safety that may lead to a significant probability of
4 17 harm to patients or health care recipients, based upon the
4 18 health care worker's professional standards of care,
4 19 professional code of ethics, or established guidelines for
4 20 certified individuals and direct care workers.

4 21 A health care worker making a disclosure which violates any
4 22 provision of the federal Health Insurance Portability and
4 23 Accountability Act, Pub. L. No. 104-191, shall not be
4 24 entitled to protection pursuant to this section nor entitled
4 25 to civil remedies which might otherwise be available pursuant
4 26 to subsection 6 or 7.

4 27 4. A health care worker disclosing in good faith the

4 28 information described in subsections 2 and 3 shall be presumed
4 29 to have established a prima facie case showing a violation of
4 30 subsection 2 or 3 by the health care worker's employer if the
4 31 individual or institution employing the health care worker
4 32 knows or has reason to know of the disclosure, and if
4 33 subsequent to and as a result of the disclosure, one or more
4 34 of the following actions were initiated by the employer:

4 35 a. Discharge of the health care worker from employment.

5 1 b. Failure by the employer to take action regarding a
5 2 health care worker's appointment to, promotion or proposed
5 3 promotion to, or receipt of any advantage or benefit in the
5 4 health care worker's position of employment.

5 5 c. Any adverse change to the health care worker's terms or
5 6 conditions of employment or any administrative, civil, or
5 7 criminal action or other effort that diminished the
5 8 professional competence, reputation, stature, or marketability
5 9 of the health care worker.

5 10 An employer shall have the burden of proof regarding any
5 11 attempt to show that actions taken pursuant to this subsection
5 12 were for a legitimate business purpose or were required by law
5 13 or administrative rule, which if proven is a complete defense.

5 14 5. If an individual or institution employing a health care
5 15 worker is determined to have violated state health, safety, or
5 16 occupational health and health licensure laws or regulations,
5 17 or professional standards of care, professional code of
5 18 ethics, or established guidelines for certified individuals
5 19 and direct care workers, after a disclosure pursuant to
5 20 subsection 2 or 3 results in an action as described in
5 21 subsection 4, such a determination shall create a presumption
5 22 of retaliation or reprisal against the health care worker in
5 23 violation of this section. Disclosure of a reasonable belief
5 24 that violations of health and safety laws or breaches of
5 25 public safety have occurred that have caused or have a
5 26 potential to cause harm to patients and health care recipients
5 27 shall immediately trigger the protection afforded by this
5 28 section.

5 29 6. A person who violates this section is subject to a
5 30 civil action as follows:

5 31 a. A person who violates this section is liable to an
5 32 aggrieved health care worker for affirmative relief.

5 33 b. A person or entity who prevails in a civil action based
5 34 on this section is entitled to equitable relief the court
5 35 deems appropriate, including attorney fees and costs and
6 1 punitive or exemplary damages.

6 2 c. When a person commits, is committing, or proposes to
6 3 commit an act in violation of this section, an injunction may
6 4 be granted through an action in district court to prohibit the
6 5 person from continuing such acts. The action for injunctive
6 6 relief may be brought by an aggrieved health care worker or by
6 7 the county attorney.

6 8 d. A civil action brought pursuant to this subsection
6 9 shall be filed within six months from the date of the alleged
6 10 violation.

6 11 7. a. In addition to any other penalties applicable to a
6 12 person who violates this section, an individual, institution,
6 13 or organization employing a person who violates this section
6 14 shall be subject to a civil penalty in the amount of one
6 15 thousand dollars per violation.

6 16 b. A health care worker found to bring a frivolous,
6 17 malicious, or nuisance cause of action against a health care
6 18 employer under this section shall be subject to a civil
6 19 penalty in the amount of one thousand dollars per violation
6 20 and up to four thousand dollars of reasonable attorney fees.

6 21 EXPLANATION

6 22 This bill relates to whistleblower complaints submitted to
6 23 the office of citizens' aide and disclosures of information by
6 24 health care workers.

6 25 New Code section 2C.11A provides that the citizens' aide
6 26 may decline to investigate a whistleblower complaint in the
6 27 same manner as the citizens' aide may decline to investigate
6 28 other complaints filed with the office. The new Code section
6 29 also requires the citizens' aide to issue a report if the
6 30 office declines to investigate a whistleblower complaint, with
6 31 the reason for that determination. The new Code section
6 32 further provides that the report issued by the citizens' aide,
6 33 whether the citizens' aide declines to investigate or does
6 34 investigate and issues findings, shall be provided to the
6 35 complainant=employee, the director or head of the employee's
7 1 agency, or to the governor if the agency director or head is
7 2 the subject of the investigation, and to the legislative
7 3 oversight committee. Code section 70A.28 is amended to

7 4 provide that the citizens' aide or any staff member of the
7 5 citizens' aide shall not be compelled to testify about any
7 6 report it issues relative to a whistleblower complaint before
7 7 the public employment relations board.

7 8 The bill also creates new Code section 147.105 to provide
7 9 protection for health care workers against retaliation or
7 10 reprisals resulting from the disclosure of certain
7 11 information.

7 12 The bill provides that a health care worker who discloses
7 13 information to a state or federal board, department, or
7 14 agency, including the attorney general and law enforcement
7 15 personnel, as described in the bill, after 14 days have
7 16 transpired following a report to the employer and opportunity
7 17 to take corrective action has transpired on the part of the
7 18 individual or institution which employs the health care worker
7 19 and which is the subject of the disclosure, shall be protected
7 20 against reprisals or retaliatory or punitive actions by the
7 21 employer if disclosure of the information is not otherwise
7 22 prohibited by statute. The bill provides that for this
7 23 provision to apply, the information disclosed must constitute
7 24 state-mandated health data required to be submitted to a state
7 25 agency, or inform a state agency or entity of a violation of
7 26 state health, safety, occupational health, licensure, and
7 27 insurance laws, or is reasonably believed by the health care
7 28 worker to be a violation of health and safety laws or a breach
7 29 of public safety that may lead to harm to patients or health
7 30 care recipients, based upon the health care worker's
7 31 professional standards of care, professional code of ethics,
7 32 or established guidelines for health care workers. The bill
7 33 provides that this provision shall not be applicable to a
7 34 disclosure which constitutes a violation of the federal Health
7 35 Insurance Portability and Accountability Act.

8 1 The bill provides that a health care worker disclosing in
8 2 good faith this information shall be presumed to have
8 3 established a prima facie case if the employer knows or has
8 4 reason to know of the disclosure, and if following and as a
8 5 result of the disclosure the health care worker was discharged
8 6 from employment, or there was a failure by the employer to
8 7 take action regarding a health care worker's appointment or
8 8 promotion, or any adverse change to the health care worker's
8 9 terms or conditions of employment as well as any
8 10 administrative, civil, or criminal action or other effort that
8 11 diminishes the professional competence, reputation, stature,
8 12 or marketability of the health care worker. The bill provides
8 13 that the employer shall have the burden of proof regarding any
8 14 attempt to show that these actions were undertaken for a
8 15 legitimate business purpose.

8 16 The bill provides that if an employer is determined to have
8 17 violated state health, safety, or occupational health or
8 18 health licensure laws or regulations, or professional
8 19 standards of care or a professional code of ethics, or certain
8 20 guidelines, after a disclosure by a health care worker
8 21 resulting in an action taken against the worker as described
8 22 in the bill, this creates a presumption of retaliation or
8 23 reprisal. The bill provides that violations of health and
8 24 safety laws or breaches of public safety that have caused or
8 25 have a potential to cause harm to patients and health care
8 26 recipients immediately trigger protection.

8 27 The bill provides that violations may be grounds for a
8 28 civil action. The bill provides that in such an action, an
8 29 employer may be liable to an aggrieved health care worker for
8 30 affirmative relief, and other equitable relief the court deems
8 31 appropriate, including attorney fees and costs and punitive or
8 32 exemplary damages. The bill also provides for injunctive
8 33 relief. The bill provides that in addition to other
8 34 penalties, an individual, institution, or organization
8 35 employing a person found to be in violation of the provisions
9 1 of new Code section 147.105 shall be subject to a civil
9 2 penalty in the amount of \$1,000 per violation. In addition,
9 3 the bill provides that a health care worker found to have
9 4 brought a frivolous claim under new Code section 147.105 is
9 5 subject to a civil penalty of up to \$1,000 per violation and
9 6 up to \$4,000 of reasonable attorney fees.

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